No [redacted]353

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1923 [redacted] 1925

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AMERICAN RAILWAY EXPRESS COMPANY
a corporation, *Petitioner*

*vs.*

GEORGE C. DANIEL, *Respondent*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA, AND BRIEF IN SUPPORT OF SAID PETITION

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1923

AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner*,

*vs.*

GEORGE C. DANIEL, *Respondent.*

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of the American Railway Express Company respectfully shows:

## NATURE OF CASE.

This is an action originally brought in the Superior Court of Madison County, Georgia, by George C. Daniel, the plaintiff therein, to recover of the American Railway Express Company, the defendant therein, the sum of one hundred fifty-two and 50/100 ($152.50) dollars, as the value of certain articles contained in an express shipment made on August 25, 1920, by Mrs. J. S. Daniel, the mother of the plaintiff, from Comer, Georgia, consigned to her son, George C. Daniel, the plaintiff, at Baltimore, Maryland; the shipment was never delivered to the consignee. The defendant, admitting the loss of the package and its contents, set up and relied upon a limited liability defense, claiming that its maximum liability was fifty ($50.00) dollars under the terms of the written express receipt which it had issued and which had been accepted by the shipper, and in which receipt the value of the

shipment was stated to be fifty ($50.00) dollars and upon which value the defendant had charged the lower alternate rate, dependent upon the value so declared or agreed upon. Defendant admitted liability to the extent of fifty ($50.00) dollars.

The jury rendered a verdict in favor of the plaintiff in the sum of one hundred ($100.00) dollars, and its motion for a new trial having been overruled by the trial court defendant appealed to the Court of Appeals of Georgia. That court sustained the lower court and allowed the verdict and judgment to stand. Defendant filed its petition for a writ of certiorari in the Supreme Court of Georgia to review the judgment of the said Court of Appeals, and this petition having been sanctioned, the writ of certiorari was issued and the case brought into the Supreme Court of Georgia for final determination. On March 1, 1924, the Supreme Court handed down its decision, which was an affirmance of the judgment of the Court of Appeals, for that three (3) Justices of the full bench of six (6) Justices stood in favor of affirming the Court of Appeals and three (3) Justices in favor of reversing the said Court and thereupon, under the rule, the judgment of the Court of Appeals stood affirmed by operation of law.

## BRIEF ANALYSIS OF THE EVIDENCE.

It appeared in the case that the shipper did not herself deliver the shipment to the Express Company for transportation but that this was done for her by a representative, one Fowler, who, while knowing in a general way the nature of the contents of the express package did not know its value. This fact Fowler stated to the express agent upon delivery to the latter of the shipment and in response to the agent's inquiry as to

its value for rate fixing purposes. The express agent thereupon asked if a valuation of fifty ($50.00) dollars would be satisfactory and this was agreed to by Fowler. The express agent then wrote that sum into the express receipt as expressing the value of the package and gave the receipt to Fowler, who accepted it.

In order to bring itself within the protection of the contract the defendant Express Company upon the trial proved by the oral testimony of the express agent that the rate charged was dependent upon the value declared. His testimony on that point was that above a fifty ($50.00) dollar valuation a higher rate would have been charged. The defendant also offered in evidence a duly certified copy of its schedule of rates of file with the Interstate Commerce Commission for the purpose of showing its tariffs, but, of his own motion, the trial judge ruled this evidence inadmissible as being irrelevant and immaterial. This was one of the rulings from which appeal was taken to the Court of Appeals.

The original express receipt having been lost, the trial court refused permission to the defendant to introduce in evidence a copy thereof containing the various terms and conditions usually found in such documents, but did accord the right to prove its contents by parole. This proof showed that the receipt accepted by Fowler read: "Comer, Ga., August 25th. One Package. Value $50.00."

## OPINION OF COURT BELOW

The final judgment was that of the Supreme Court of Georgia affirming the judgment of the Georgia Court of Appeals. The Supreme Court is the highest court of Georgia in which a decision could be had. No opinion accompanied

the Supreme Court decision. The practice has been not to write opinions when the decision of the lower court is affirmed by operation of law because of an equally divided court. The decision of the Court of Appeals which thus stands affirmed contains the only reasons assigned in support of the judgment. The crux of that opinion is found in the headnote of the case as written by Judge Stephens of the Court of Appeals and in the excerpts quoted below from the body of the opinion.

Thus the headnote reads:

1. "Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the contract of shipment, as provided in the Second Cummins Amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties, a recital in the receipt of a certain valuation of the property, even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agrement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation.

And in the opinion it is said:

"A value arbitrarily placed by the carrier upon the property presented for transportation, even though the

reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage.

In the case before us it does not appear that the shipper made any declaration as to the value of the article shipped. Nor does it appear that the $50 valuation placed upon the shipment by the agent of the defendant carrier, which was less than the true value, even though acquiesced in by the agent of the shipper, was, if agreed upon, agreed upon as a reduced value knowingly and understandingly and for the purpose of securing the benefit of the reduced rate. In fact it does not appear that the shipper's agent who delivered the package to the carrier had any information whatsoever that the carrier was authorized to charge a reduced rate based upon a reduced valuation. It furthermore appears that the agent of the shipper was ignorant of the value of the contents of the package presented for transportation, and the agent of the carrier receiving the package was aware of this ignorance, and upon the professed inability of the agent for the shipper to declare the value of the articles presented for transportation, the carrier's agent suggested the value of $50, which was placed upon the property shipped and a rate made accordingly."

And further appear these words:

"Evidence to the effect that the $50 valuation placed upon the contents of the shipment was recited in the receipt does not, without more, establish that the receipt contained an agreement whereby the shipper consented

to the $50 valuation for the purpose of securing the reduced rate charged."

The decision presupposes certain essential facts as having been shown and draws a legal conclusion therefrom, thus:

(a) That the Express Company did maintain rates dependent upon the value of the shipment declared or agreed upon in writing.

(b) That the Interstate Commerce Commission had authorized or required this under the provisions of the Second Cummins Amendment (Act Aug. 9, 1916).

(c) That the Express Company gave the shipper a receipt in which a valuation of the particular shipment was written.

(d) That it applied to the shipment the lower alternate rate adjusted to the value so written.

The conclusion drawn is that the proof of these facts will not serve to effectuate a limitation of liability to the sum written in the receipt because the carrier did not make it appear that the value of the shipment as stated in the receipt was made *knowingly* and *understandingly* for the purpose of securing the lower alternate rate which was in fact applied by the carrier to the value thus stated.

## THE MAIN POINT INVOLVED IN THE CASE

The questions which the case presents may be stated thus:

I. Is the liability of the carrier limited to fifty ($50.00) dollars when as to an interstate shipment, it shows that it maintains alternate rates dependent upon the value declared

or agreed upon in writing by the shipper, and that when the shipment was tendered it for transportation it gave the shipper a written receipt therefor in which there appeared only an acknowledgment of the receipt of the package and a statement that its value was fifty ($50.00) dollars?

(a) Or must the carrier go further and show that the valuation thus declared or agreed upon was declared or agreed upon *knowingly and understandingly for the purpose* of securing the lower rate?

II. In the absence of evidence procured by the carrier to show the *knowledge* and *understanding* with which the shipper declared or agreed upon the value, will the estoppel which otherwise would affect his right to recover full actual value be operative?

(a) Or will the court conclusively presume in the absence of fraud, the purpose for which the value was declared or agreed upon?

III. Did the trial court err in excluding the defendant Express Company's rate schedules of file with the Interstate Commerce Commission?

## REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

I. Your petitioner now avers that the Supreme Court of Georgia erred in making and entering the final judgment in this cause on the 1st day of March, 1924, in and by which final judgment the Supreme Court affirmed and sustained the judgment of the Court of Appeals of Georgia, theretofore made and entered in this case.

II. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that your petitioner was liable to the extent of the actual value of the property lost because your petitioner did not produce evidence or otherwise make it appear that the value written into the receipt, issued by it and accepted by the shipper, was placed therein *knowingly* and *understandingly* for the purpose of securing the lower rate adjusted to the value thus inserted.

III. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that under the Act of Congress passed August 9, 1916, known as the "Second Cummins Amendment" to the Interstate Commerce Act, your petitioner, in order to limit its liability to the value declared or agreed upon in writing by the shipper, must make it appear that the value so declared or agreed upon was *knowingly* and *understandingly* written for the purpose of securing the lower rate and that the legal presumption that it was so done would not avail your petitioner.

IV. The Supreme Court of Georgia erred, to the prejudice of your petitioner, in sustaining and affirming the Court of Appeals of Georgia which in turn had affirmed the trial court in excluding, ex mero motu, certified copies of your petitioner's rate schedules of file with the Interstate Commerce Commission.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Georgia to the end that the judgment of the Supreme Court

of Georgia may be reviewed and reversed by this Honorable Court.

AMERICAN RAILWAY EXPRESS COMPANY,

By Robert C. Alston

Its Attorneys.

Blair Foster

STATE OF GEORGIA
COUNTY OF FULTON, S.S.

BLAIR FOSTER, being first duly sworn deposes and says that he is attorney for the American Railway Express Company, a corporation, the above named petitioner; that he prepared the foregoing petition, and is authorized to make this affidavit; and that the facts therein alleged are true as he verily believes.

Blair Foster

Sworn to and subscribed before me the undersigned Notary Public, this 17 day of April, 1924.

My commission expires the 20th day of December 1925.

Alex C. McDonald

Notary Public,
Fulton County, Georgia.

I hereby certify that I have examined the foregoing petition, and, in my opinion, the petition is well founded and this cause is one in which the prayer of the petition should be granted by the Supreme Court of the United States.

Robert C. Alston

Of Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner,*

*vs.*

GEORGE C. DANIEL, *Respondent.*

# BRIEF OF AMERICAN RAILWAY EXPRESS COMPANY IN SUPPORT OF ITS PETITION FOR A WRIT OF *CERTIORARI.*

The petition for the writ of certiorari seeks to review a decision of the Supreme Court of the State of Georgia, which is the highest court in which the case was actually decided. The case was appealed to the Court of Appeals of Georgia by the petitioner from an adverse judgment of the nisi pruis court. From the decision of the Court of Appeals sustaining the lower court, petitioner applied to the Supreme Court of Georgia for a writ of *certiorari* and the writ having been granted, the cause was removed to the Supreme Court for final review and determination. Although the granting of the writ is discretionary, the Georgia Supreme Court having issued it assumed jurisdiction of the cause for final determination.

Art. 6, Sec. 2, Par. 5, Constitution of Georgia.

Central of Georgia Ry. Co. vs. Yesbik, 146 Ga., 620.

The final judgment rendered by the Supreme Court was an affirmance of the Court of Appeals. This came about because the six (6) justices of the Supreme Court divided evenly on the case, and under the law of Georgia the decision under review thereupon stood affirmed by operation of law. Following the custom in divided opinion cases the Supreme Court's decision was not accompanied by an opinion.

Code of Georgia, 1910, Sec. 6208;

City of Barnesville vs. Murphey, 113 Ga. 779.

## POINTS AND AUTHORITIES RELIED UPON.

1. The challenge is to the legal conclusions drawn by the Court of Appeals and sustained by the Georgia Supreme Court on *certiorari*. In reaching its conclusions the lower courts assumed that the proof which this court has held to be prerequisite was made in the trial court—that is that your petitioner did maintain rates dependent upon value declared or agreed upon in writing and that it had been expressly authorized so to do by the Interstate Commerce Commission.

American Railway Express Co. vs. Lindenburg, 260 U. S., 584;

Cincinnati, New Orleans & Texas Pacific Ry. Co. vs. Rankin, 241 U. S., 319;

New York Central & Hudson River R. Co. vs. Beaham, 242 U. S., 148.

2. Certified copies of the rate schedule were offered in evidence by your petitioner and excluded by the trial judge as irrelevant to any issue in the case. This was error.

Southern Express Company vs. Byers, 240 U. S., 612;

New York Central & Hudson River R. Co. vs. Beaham, 242 U. S., 148.

3. A written declaration or agreement as to value of the package made at the time of shipment and contained in a receipt given by the carrier to the shipper and accepted by him is presumed to be made for the purpose of applying the rate applicable to that value. And when alternate rates dependent upon value are maintained it is not necessary for the carrier, in order to sustain its limited liability defense, to make it appear further that the declaration or agreement was made knowingly and understandingly for the purpose of obtaining the lower rate.

This is true because the law conclusively presumes knowledge on the part of the shipper of the lawful rates as maintained by the carrier and of file with the Interstate Commerce Commission. The law presupposes the value to be stated for the purpose of fixing the rate.

Kansas City Southern Ry. Co. vs. Carl, 227 U. S., 639;

Missouri, Kansas & Texas Ry. Co. vs. Harriman, 227 U. S., 657;

Boston & Maine Rd. vs. Hooker, 233 U. S., 97;

Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. vs. Dettlebach, 239 U. S., 588;

Louisville & Nashville Railroad Co. vs. Maxwell, 237 U. S. 94;

That the shipment was arbitrarily valued can make no difference in the absence of rebating or false billing. The value declared determines the rate applicable. The plaintiff cannot recover more than the stated value to which the rate was applied.

Hart vs. Pennsylvania Railroad Co., 112 U. S., 331;

George N. Pierce Co. vs. Wells-Fargo Co., 236 U. S., 278;

Great Northern Ry. Co. vs. O'Connor, 232 U. S., 508;

Atchison, Topeka & Santa Fe Ry. Co. vs. Robinson, 233 U. S., 173;

4. As to Fowler's agency and authority, see:
Great Northern Ry. Co. vs. O'Conner, 232 U. S., 508, 514.

Respectfully submitted,

Robert C. Alston

Allen Foster

Attorneys for Petitioner.

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Sir:

Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of the American Railway Express Company, a corporation, we shall move the motion hereto annexed before the Supreme Court of the United States, at the Capitol, in the City of Washington, District of Columbia, on the 5th day of May, 1924, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, and we shall then and there move for such further relief in the premises as may be just.

Dated Atlanta, Georgia, this 17 day of April, 1924.

To

Berry T. Moseley, Esq.,
Danielsville, Ga.

Robert C. Alston

Attorneys for Petitioner.

Service of the foregoing notice of motion acknowledged; copy of the petition for writ of certiorari and brief in support thereof received. This...17.....day of April, 1924.

Barry F Mowrey

Attorney for Respondent.

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OCTOBER TERM, 1923.

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*vs.*

GEORGE C. DANIEL, *Respondent.*

NOW comes the petitioner by Robert C. Alston its attorney, and moves this court, upon a certified copy of the transcript of the record herein, and upon the annexed petition, sworn to on the 17 day of April, 1924 for a writ of *certiorari* directed to the Supreme Court of Georgia, to bring before this Honorable Court, for review, the proceedings herein in said Supreme Court of Georgia, and for such other and further relief in the premises as may be just.

Robert C Alston

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